

Internal Revenue Service

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Date:

November 08, 2007

Legend:

Taxpayer =

Date 1 =

Dear :

This is in reply to a letter dated August 3, 2007, requesting a ruling on behalf of Taxpayer. The requested ruling is that to the extent that Taxpayer recognizes section 988 gains on certain Credit Facilities and Foreign Notes described below, those section 988 gains will be treated as qualifying income under sections 856(c)(2) and (3) of the Internal Revenue Code

Facts:

Taxpayer is a publicly traded domestic corporation that elected to be taxed as a real estate investment trust (REIT) beginning with its tax year ended Date 1. Taxpayer is engaged in the commercial real estate finance business with a principal focus on originating and investing in loans, including loans secured either by mortgages on real property, unsecured debt securities, or real property assets that are leased to third party tenants.

Taxpayer generally finances the acquisition of its assets through borrowings on its unsecured, multi-currency, revolving credit agreements (the Credit Facilities). Taxpayer invests in loans denominated in non-U.S. currencies (generally Pounds Sterling and Euros) as part of its overall portfolio. Taxpayer intends to continue to invest in non-U.S. dollar denominated loans as well as non-U.S. real property assets (collectively, the "Foreign Investments"). Taxpayer desires to finance the acquisition of the Foreign Investments by borrowing on its existing multi-currency revolving Credit

Facilities in the currencies that match the currencies of the Foreign Investments. For example, Taxpayer would borrow amounts on the Credit Facilities in Euros to acquire a Foreign Investment denominated in Euros. Once the amounts outstanding on the Credit Facilities have grown to a sufficient size, Taxpayer will issue debt obligations denominated in the same foreign currency (the Foreign Notes) and use the proceeds to pay down the Credit Facilities.

The Foreign Notes will generally have a fixed term and will pay interest at a fixed or customary floating rate such as LIBOR. Neither principal nor interest on the Foreign Notes will be based on the revenues or profits of Taxpayer or any other person. Taxpayer represents that its principal purpose in incurring non-U.S. dollar denominated debt is to finance the acquisition and ownership of its Foreign Investments on a cost-effective basis, and not to speculate in foreign currencies.

Taxpayer represents that the Credit Facilities and the Foreign Notes will be used for the valid business purpose of financing, in a cost-effective manner, the acquisition of primarily REIT-qualifying assets. Additionally, Taxpayer represents that it does not intend the Credit Facilities or the Foreign Notes to be a means of speculating in foreign currency.

Law and Analysis:

To qualify as a REIT, an entity must derive at least 95 percent of its gross income from sources listed in section 856(c)(2) and at least 75 percent of its gross income from sources listed in section 856(c)(3). Among the sources of gross income that satisfy the 75 percent income test in section 856(c)(3) is interest on obligations secured by mortgages on real property or on interests in real property. A REIT may satisfy the 95 percent income test under section 856(c)(2) with income derived from interest. Gains from foreign currency are not among the enumerated sources listed in either section 856(c)(2) or (c)(3).

Section 985(a) provides, in general, that all determinations for federal income tax purposes shall be made in a taxpayer's functional currency.

Section 988(c) defines a "section 988 transaction" as any transaction described in section 988(b) if the amount which the taxpayer is entitled to receive (or is required to pay) by reason of such transaction is denominated in terms of a nonfunctional currency or is determined by reference to the value of 1 or more nonfunctional currencies. Under section 988(c)(1)(B)(i), a "section 988 transaction" includes the acquisition of a debt instrument or becoming the obligor under a debt instrument.

Section 988(b)(1) provides that the term "foreign currency gain" means any gain from a section 988 transaction to the extent that such gain does not exceed gain

realized by reason of changes in exchange rates on or after the booking date and before the payment date.

In the present case, Taxpayer will acquire the Foreign Investments by borrowing amounts denominated in foreign currencies under the Credit Facilities and Foreign Notes. When Taxpayer makes a payment of either principal or interest on the debt obligations, section 988 gains can arise when the U.S. dollar (Taxpayer's functional currency) appreciates relative to the foreign currency. The section 988 gain is thus attributable to fluctuation of the exchange rates of currency used to make payments on the debt obligations incurred to acquire qualifying assets.

In Rev. Rul. 2007-33, 2007-21 I.R.B. 1281, a REIT recognized income from rents denominated in Euros. The REIT also recognized interest income on Euro denominated mortgage loans, and section 988 foreign currency gain when the value of the euro changed in value against the dollar. The revenue ruling holds that if section 988 gain is recognized with respect to income recognized by a REIT, the gain is treated as qualifying income under section 856(c)(2) or (3) to the extent that the underlying income so qualifies.

Unlike the facts presented in Rev. Rul. 2007-33, the facts and representations in this case indicate that the section 988 gain is attributable to a liability and expense of Taxpayer's that arose in connection with the acquisition of qualifying REIT assets. Similar to Rev. Rul. 2007-33, however, there is a close nexus to Taxpayer's business of investing in loans and real property assets, which produce income that qualifies under sections 856(c)(2) or (3). The section 988 gain recognized in connection with the production of otherwise qualifying income is treated as being qualified income to the extent that the underlying income so qualifies.

We conclude that to the extent Taxpayer recognizes section 988 income on the Credit Facilities and Foreign Notes used to acquire assets from which income is derived that qualifies under sections 856(c)(2) or (3), there is a sufficient nexus to treat the section 988 income as income that qualifies under sections 856(c)(2) or (3).

Except as specifically ruled upon above, no opinion is expressed concerning any federal income tax consequences relating to the facts herein under any other provision of the Code. Specifically, we do not rule whether Taxpayer otherwise qualifies as a REIT under part II of subchapter M of Chapter 1 of the Code.

This ruling is directed only to the taxpayer requesting it. Taxpayer should attach a copy of this ruling to each tax return to which it applies. Section 6110(k)(3) of the Code provides that this ruling may not be used or cited as precedent.

Sincerely,

William E. Coppersmith
William E. Coppersmith
Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)